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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 244

JONES BEACH STATE PARKWAY AUTHORITY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF OF PETITIONER

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1. *Petitioner Raises an Issue of Law, Not of Fact.* The brief in opposition submitted by the Government attempts to reduce the issues raised on this petition to a simple *factual* question of value. It is apparent, however, that the questions presented are issues of *law*, incorrectly resolved by the courts below and decided in conflict with applicable decisions of other Circuits.

The property condemned by the Government had been irrevocably dedicated to park use by covenants running with the land, and at the time of the taking the property was in fact used as a park. Nevertheless, although under no circumstances could Petitioner have used or disposed of the land except as a park, both courts below determined that the measure of compensation for the property should be its market value for residential purposes. The issue

of fact, which both courts below decided, was the value of the property for residential purposes. The issue of law is whether the legal premise underlying that finding was correct: *i.e.*, whether the measure of compensation should be the value of the land as a park, its actual and restricted use, rather than a value for a fictitious use to which the land could in no event be devoted.

It cannot truthfully be argued that either court below determined the value of this property as a park. The District Court stated flatly that:

> "If land is suitable and available for public park use or public recreational activities, its value must be determined by the prevailing prices being paid for comparable land in the area, for which a market and demand exist for residential, commercial or industrial use. By the same token, if land devoted to public park or recreational activities were to be sold or condemned, the same measure of valuation would obtain." 151 F. Supp. 631, 637.

Similarly, the Court of Appeals affirmed the judgment of the District Court that the findings of value should be based on a market price for residential use:

> "The State's contention that the lands here must be evaluated upon the basis of the restricted use thereof for park purposes fails for the same reasons a similar contention failed in the *Westchester Commission* case." 255 F. 2d 329, 333.

Both courts below, therefore, committed the basic error of determining value as if the land could have been used for residential purposes. In light of the incontrovertible and uncontroverted evidence that this land could be used and was used only as a park, it is plain that the value determined by the courts below was irrelevant to the issue, because it was based on the erroneous conclusion of law that compensation should be measured by a fictitious use.

It is obvious that the extent to which the avigation easements might have impaired the value of the property differs substantially, depending on whether the land is to be used for the erection of dwellings or for parkland and planted and landscaped borders of a parkway. In the case of parkland and parkway borders, structures are neither necessary nor desirable. The market value premise adopted by the courts below ignores this difference. The propriety of that premise is the issue of law which Petitioner seeks to review in this Court.

This question of law is important to State Governments. Capital expenditures by States for such non-commercial governmental functions as parks, roads or schools cannot be governed by commercial standards, such as an expected return on investment. The approach taken by the courts below tests the value of such properties as if they were held for a commercial use, even though no such use could possibly exist. The result, in the case at bar, is to impair the ability of the State to provide essential services to its people, and to exact from the people of New York a disproportionate contribution to the United States. The failure of the courts below to recognize that different rules must be used to value such non-commercial property is in conflict with the decisions of other Circuits, as discussed in the Petition for Certiorari at pages 11-15.

2. Although the issue of compensation is to be determined as of the time of the taking, the Government's brief in opposition attempts to show that the land was acquired by Petitioner in order to barter the easements for a parkway right-of-way over Government land and with the expectation that the land would be used for the expansion of Mitchel Field. However, the Government's assertion at page 2 that the "United States had expressed its desire to expand operations at Mitchel Field," is contrary to the record. The record shows that the Government informed

Petitioner that "The Air Force does not anticipate future physical expansion of the air base." (Pet. App. 82a; 20.) Moreover, under the statutes which enable Petitioner to acquire property, this property could only be acquired for the highway and park purposes for which the Authority was created.

The issue of law before this Court is the true measure of valuation of the property to Petitioner at the time of the taking. We submit that its value as a park, its *restricted* and *only* use, must be the true measure of compensation.

Dated: September 17, 1958.

Respectfully submitted,

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